

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
COOPERATIVE AGREEMENT**

- |   |  |
|---|--|
| 1. To: Rotorcraft Industry<br>Technology Association<br>Mail Stop 207-1<br>Ames Research Center<br>Moffett Field, CA 94035-1000 | 2. Coop. Agreement No.: NCCW-0076<br>3. Supplement: Basic<br>4. Effective date: August 15, 1995<br>5. Expiration date: August 14, 2000 |
|---|--|

6. For research entitled: Advanced Rotorcraft Technology

7. Under the direction of: Executive Director of the Rotorcraft Industry  
Technology Association

8. Award History Previous amount: \$ -0- This action: \$ -0- Total to date: \$ -0-	Funding History Previous obligation: \$ -0- This action: \$ -0- Total obligation to date: \$ -0-
---	---

9. NASA Procurement Request Number: D-13972  
PPC Number: WX                      Appropriation: Not Applicable

10. Points of Contact:

NASA Program Manager: Joe Elliott, NASA Headquarters, Code RS, Washington, DC 20546; Phone: (202) 358-4641

Director of the National Rotorcraft Technology Center: C. Thomas Synder, NASA Ames Research Center, Mail Stop 207-1, Moffett Field, CA 94035-1000; Phone: 415-604-5066.

Agreement Administrator: Adriene Woodin, NASA Headquarters, Code HWG, Washington, DC 20546; Phone: 202-358-0508.

Payment: NASA Headquarters, Financial Management Division, Code BFH, Washington, DC 20546; Phone: 202-358-1050

11. This Cooperative Agreement as defined in 31 U.S.C. 6305, is awarded under the authority of 42 U.S.C. 2473(C)(5).

12. Applicable statement, if checked:

☐ No change is made to existing provisions or special conditions.

UNITED STATES OF AMERICA

ROTORCRAFT INDUSTRY TECHNOLOGY  
ASSOCIATION

(Signed)                      9/18/95  
Barbara Cephas              Date  
Agreement Officer

(Signed)                      8 SEP 95  
Albert L. Winn              Date  
Chairman of the Board of Directors

## COOPERATIVE AGREEMENT

This award is a Cooperative Agreement as it is anticipated that there will be substantial United States Government (Government) involvement during performance of the effort. The recipient can expect Government collaboration or participation in the management of the project. The Government and the recipient mutually agree to exert all reasonable efforts to fulfill the intent of this Agreement according to the Provisions stated below.

### PROVISIONS

#### 1. Purpose

The purpose of this Cooperative Agreement is to develop technology, processes and standards to improve the international competitiveness capabilities of the U.S. Rotorcraft Industry and to ensure the superiority of the U.S. Military Rotorcraft.

1.1 The National Aeronautics and Space Administration (NASA), the U.S. Department of Defense (Department of the Army and Department of the Navy), the Federal Aviation Administration, other Federal Government agencies, the U.S. Rotorcraft Industry and academia are establishing the National Rotorcraft Technology Center (NRTC) to accomplish the Purpose of this Cooperative Agreement. NRTC will facilitate the combining of U.S. Government and corporate resources in a unique program for the development and dissemination of information to the U.S. Rotorcraft Industry through a nonprofit corporation, the Rotorcraft Industry Technology Association (RITA) as defined in Section 1.4.2 of this Cooperative Agreement. Figure 1, appended to this Agreement, illustrates the organization of the NRTC and its relationship to RITA.

1.2 The benefits of the NRTC - the resolution of technical challenges in areas identified by the industry participants - will accrue to the U.S. Rotorcraft Industry as well as NASA and other participating federal agencies, through the direct performance of research by the members of RITA and Government agencies, as appropriate.

1.3 This is a collaborative effort among industry, academia, and Government to develop, evaluate, demonstrate, and test advanced rotorcraft technologies. The technical work, which will be problem-driven to reflect current and future needs in the rotorcraft industrial community, will include the following general areas:

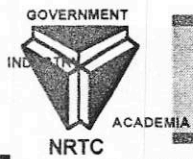
1.3.1 Application of Integrated Process and Product Development to improve quality and reduce costs

1.3.2 Critical technologies

1.3.3 Increased passenger and community acceptance

1.3.4 Augment aviation and ground infrastructure to expand commercial operations

1.3.5 Harmonize military and civil design specifications and standards



# NRTC Functional Elements

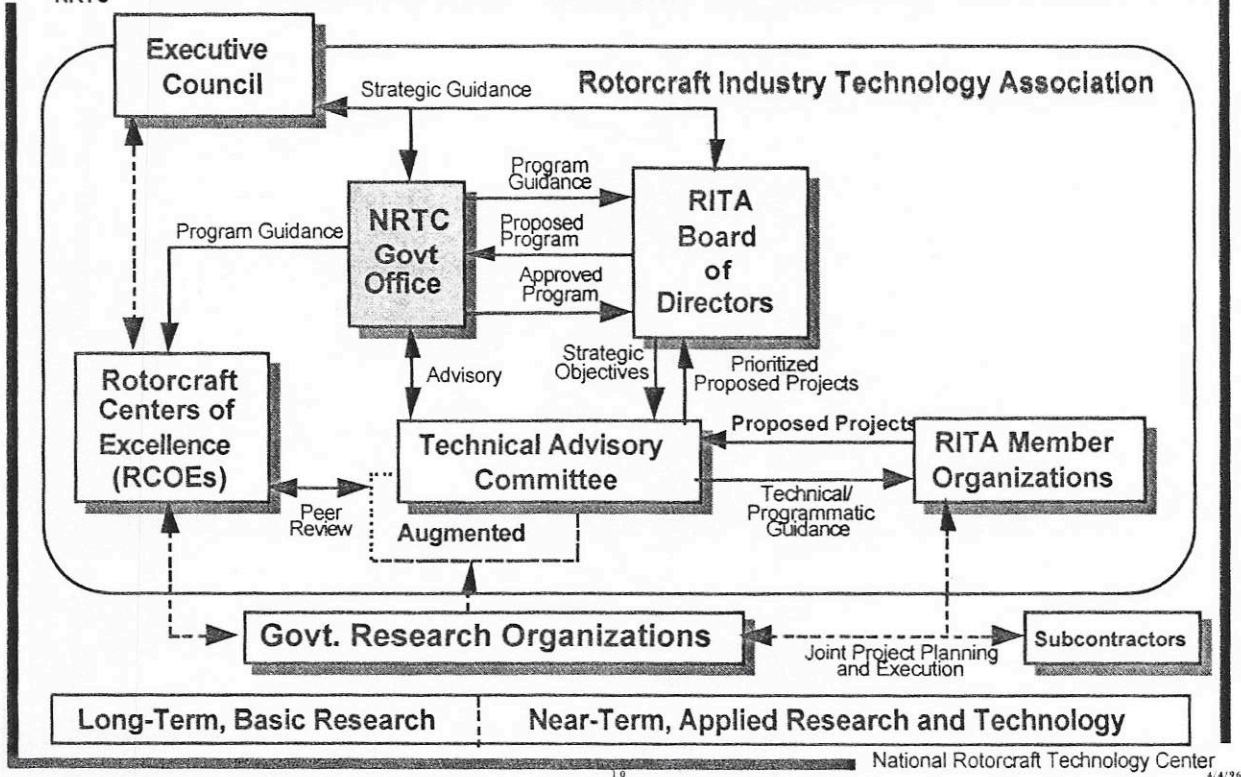


Figure 1: NRTC Organization

#### 1.4 Definitions

1.4.1 "NRTC" shall mean the National Rotorcraft Technology Center as described in subparagraph 1.1 above.

1.4.2 "RITA" shall mean the Rotorcraft Industry Technology Association, Inc., a non-profit corporation organized to support the activities described in this Cooperative Agreement. RITA will be composed of members of the U.S. Rotorcraft Industry and academic institutions. Consistent with the Government objectives of increasing the international competitiveness of the U.S. Rotorcraft Industry and insuring national security, the Government has directed that no foreign firm or institution shall be eligible for membership in RITA. Therefore, Membership shall be limited to companies and other business entities, substantially owned or controlled by U.S. citizens, that conduct a significant portion of research, development, engineering, and manufacturing activities in the United States. Membership should be organized into Principal, Supporting and Associate levels, comprised as follows:

Principal - Major rotorcraft manufacturers qualifying for membership as defined in the RITA Bylaws.

Supporting - All other industry participants qualifying for membership as defined in the RITA Bylaws.

Associate - All non-profit associations and academic participants qualifying for membership as defined in the RITA Bylaws.

Members' access to all technology developed under this Cooperative Agreement shall be governed by the RITA Intellectual Property Rights Provisions. Members include entities listed as members on a Member Information Statement, including affiliates under common control.

1.4.3 "Parties" shall mean RITA and NASA as the lead agency for the Government departments or agencies participating in the NRTC.

1.4.4 "Agreement" shall mean this Cooperative Agreement between RITA and NASA.

1.4.5 "Program" shall mean the overall effort conducted by NASA and RITA under this Agreement.

1.4.6 "Project" shall apply to individual research efforts conducted under this Agreement.

1.4.7 "Recipient" is defined in Paragraph 16.1.6

1.5 The Parties will contribute resources in connection with the Program as provided in paragraph 5 below.

## 2. Responsibilities

### 2.1 NASA responsibilities:

2.1.1 Establish a Government NRTC office at Ames Research Center to oversee the operation of the NRTC Program. NRTC will serve as a catalyst and agent for fostering the combining of the resources of Government, industry and academia to identify and expedite the conduct of dual-use rotorcraft technology development efforts. In this regard, NRTC will facilitate access to Government laboratories, expertise and experimental facilities for this purpose.

2.1.2 Appoint an NRTC Director and an Agreement Administrator to interface with RITA. Review and approve the Annual Program Plan (as required in subparagraph 2.2.1 below) and recommended list of Projects developed by RITA. NASA may, in consultation with RITA, delete Projects from the recommended list and by so doing exclude them from funding considerations or suggest modifications of the Projects to RITA. The reasons for deleting or modifying Projects will be indicated so the Project can be reevaluated by RITA if appropriate. One (1) month after receipt of each annual program plan NASA will provide a letter documenting the disposition of that annual plan to RITA. The annual disposition letter will state the annual amount of the direct NASA funding on a project basis. The annual disposition letter will also specify that the total contribution by RITA shall be not less than the amount of the direct NASA funding. RITA shall respond to NASA in writing indicating the acceptance or rejection of the contents therein, by RITA and RITA members. The annual disposition letters shall constitute the entire agreement of the parties concerning the amount of their annual contributions.

2.1.3 NASA shall identify representatives from the participating Government agencies who shall attend the RITA Board of Directors and Technical Advisory Committee meetings in a Government liaison capacity, as non-voting advisors on matters relating to NRTC.

2.1.4 NASA recognizes that RITA may pursue independent business activities other than those involving NRTC.

2.1.5 In order to enhance communications with the NRTC Government Office, the Government will make office space available on site at NASA Ames Research Center for RITA administration. For this purpose, office space, utilities and related services for a small RITA staff of two to three people will be provided by NASA on a no-charge basis. The Government retains accountability as well as title to the property; physical changes will be made only with the concurrence of the NRTC Director or other designated Government Representative. RITA will provide its own office furniture, equipment, supplies, telephone service, etc. RITA will adhere to Center operating procedures as prescribed by Ames Research Center (e.g., security, etc.) Under this Agreement, RITA is authorized use of the types of property and services listed below, to the extent to which they are available, while on site at the NASA installation.

- 2.1.5.1 Office space and utilities, as stated above.
- 2.1.5.2 Shared use of conference room facilities.
- 2.1.5.3 Publications and blank forms stocked by the installation, as required for adherence to installation operating procedures.
- 2.1.5.4 Safety and fire protection for RITA personnel and facilities.
- 2.1.5.5 Medical treatment of a first-aid nature for RITA personnel injuries or illness sustained during on-site duty.
- 2.1.5.6 Cafeteria privileges for RITA employees during normal operating hours.
- 2.1.5.7 Building maintenance for facilities occupied by RITA personnel.
- 2.1.5.8 The Government retains the right to rescind this provision, and will provide 90 days notice to RITA in the event that office space can no longer be provided.

## 2.2 RITA Responsibilities:

2.2.1 Determine and evaluate rotorcraft technology needs and develop an Annual Program Plan consistent with the strategic research objectives developed by the NRTC Executive Council. The Annual Program Plan should consist of prioritized research projects involving RITA members. Each Annual Program Plan shall be prepared and submitted to the NRTC Director in accordance with schedules, proposed funding levels, guidelines, and formats as mutually agreed upon between the Parties. In addition to the Annual Program Plan, RITA shall provide such reasonable backup information as requested.

2.2.2 RITA will submit a revised Annual Program Plan to the NRTC Director, if requested to support the government in its program plan review and approval process.

2.2.3 In addition to funded projects submitted in the annual program plan, RITA may submit projects not requiring NRTC funding but which do require access to Government facilities, equipment or personnel. These projects would be conducted in a cooperative manner, on a best effort basis, between RITA and the Government Agency(s) consistent with each party's policies, requirements and mission. These projects will be subject to the same approval process as funded projects, and once approved be subjected to the same requirements as any approved project.

2.2.4 Provide to NASA the RITA Intellectual Property Rights Provisions to transfer the technology developments under this Agreement among RITA members consistent with the purpose of the NRTC stated in paragraph 1 of this agreement.

2.2.5 Provide current copies of all documents relating to the organization and operation of RITA.

2.2.6 Perform research and development Projects identified in the Annual Program Plan in accordance with subparagraph 2.2.1 and submit quarterly reports on the status of Project Milestones. Conduct periodic meetings with the NRTC to review such status.

2.2.7 Sponsor technical exchanges for members of RITA which provide state-of-the-art information on the results of the work undertaken within the Program, consistent with the RITA Intellectual Property Rights Provisions established under subparagraph 2.2.12.

2.2.8 Provide a means of identifying and utilizing experts to effectively address technical and productivity problems experienced by the industry.

2.2.9 During performance of this Agreement, the RITA Board of Directors and Technical Advisory Committee shall maintain close liaison with the NRTC Director for the technical and scientific monitoring of this Agreement.

2.2.10 Develop other task areas as dictated by the ongoing operation of the NRTC.

2.2.11 Manage the membership of RITA to promote broad representation of the U. S. Rotorcraft Industry.

2.2.12 RITA shall respond to NASA in writing indicating the acceptance or rejection of the annual disposition letter by RITA and RITA members. See 2.1.2.

**3. Responsibilities of the Agreement Administrator:**

3.1 Serve as the Government's authorized representative for the administration of Agreement.

**4. Responsibilities of the NRTC Director**

4.1 Function as the technical representative for the Agreement Administrator in the implementation of this Agreement.

4.2 The NRTC Director is not authorized to issue and RITA is not required to follow any Technical Advice which constitutes work which is not contemplated under this Agreement; which in any manner causes an increase or decrease in the respective contributions or in the time required for performance of the Project; which has the effect of changing any of the terms or conditions of this Agreement; or which interferes with RITA's right to perform the Project in accordance with the terms and conditions of this Agreement.

## 5. Resource Contribution

5.1 The government direct funding and the industry contribution will be agreed to as part of the Annual Plan. However, in no case will the Government direct funding be more than 50% of the cost of each project as determined to be allowable in accordance with 14 CFR 1260.406. In no case should the direct Government funding be considered a fee to RITA or be used to fund the formation of RITA or the administrative costs of the RITA office. The allowability of costs contributed by RITA, or its members, as matching resources is determined according to Article 14 hereof.

5.2 It is anticipated that cost incurred by RITA or its members in the performance of Projects under this Agreement, will include industry contribution in the following classifications:

5.2.1 Independent Research and Development (IR&D) as defined in FAR 31.205-18 and Cost Accounting Standard (CAS) 420 (48 CFR 9904.420)

5.2.2 Manufacturing and Production Engineering (M&PE) costs as defined in FAR 31.205-25

5.3 The Government and RITA intend to fund the Projects performed under this Agreement without affecting the member(s) ability to recover their share of the cost (i.e., the costs not reimbursed by the Government pursuant to this Agreement) classified as IR&D and M&PE through their normal practices for the allocation of the above types of costs to final cost objectives. Other costs contributed as matching resources by RITA or its members shall not be charged to the Government under any other contract, grant, or cooperative agreement. This agreement is funded jointly by Government and RITA and its members through three types of resource contributions. They are: the direct NASA contribution- the fixed amount of dollars funded by NASA under this agreement; the Government indirect contribution- that portion of the member's contributions which are classified as IR&D and M&PE costs that are allocable as indirect costs under Government contracts; and the member's contribution- that portion of the member's contribution which is not recovered from the Government. This will result in a final cost to the government that is significantly greater than the 50% direct contribution since the final government contribution will be comprised of the direct funding contribution, a maximum of 50%, plus the amount the members recover as costs under Government contracts through the IR&D and M&PE accounting recovery process. It is agreed that each performing member will credit to the appropriate cost objectives the Government payments under this Agreement.

5.4 Pursuant to NASA FAR Supplement 18-31.205-18, costs contributed by the Recipient under this cooperative arrangement with NASA are recoverable under Government contracts to the extent that the Recipient's contribution consists of allowable IR&D costs, as long as these costs would otherwise have been allowed as IR&D had there been no cooperative arrangement. Entitlement to recover such IR&D costs under contracts awarded by NASA and other agencies has been recognized by the DCAA (See attachment V).

5.5 RITA agrees to require that each project performed under this Agreement will be accounted for in a manner that will allow the identification of total project costs incurred in support of the Government and RITA members. Accordingly, project costs will be separately identified in order to support audit requirements discussed in section 15.1 (Management and Audit) and record requirements discussed in Section 15.2 (Records).

5.6 NASA is providing a fixed amount of funding for activities performed under this cooperative agreement and is under no obligation to provide additional funds. Under no circumstances shall the recipient undertake any action which could be construed to imply an increased commitment on the part of NASA under this cooperative agreement. It is the intent of the parties to perform the projects within the funding provided in the annual disposition letter. However, in no event, shall either NASA or RITA be obligated to continue performance beyond the point where the costs incurred equal the funding provided. RITA may, at its option, continue such performance beyond the funding provided in the annual disposition letter in which event the costs incurred in excess of such funding shall not be funded directly by NASA under this agreement.

5.7 An exception to the fixed nature of the amount of direct Government funding occurs if, at the completion of a project, the funds expended on that project are less than the amount specified in the annual disposition letter. In this case, final payment for the project shall be adjusted to preserve the ratio of direct Government to RITA funding specified in the annual disposition letter for that project.

## **6. Disputes**

6.1 The Parties to this Agreement shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this provision with the objective of resolving any misunderstandings, disagreements, claims, or disputes by mutual agreement. If an agreement cannot be reached, the parties may pursue any remedies available at law.

## **7. Liability and Risk of Loss**

7.1 With regard to activities undertaken pursuant to this Agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors, subcontractors, etc.), or employees of the other's related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

7.2 To the extent that a risk of damage or loss is not dealt with expressly in this Agreement, each party's liability to the other party arising out of this Agreement, whether or not arising as a result of an alleged breach of this Agreement, shall be limited to direct damages only, and shall not include any loss of revenue or profits or other indirect or consequential damages.

## **8. Payment (Nov. 1991)**

8.1 Advance payments by the Department of Health and Human Services Payment Management System: Smartlink II or Direct Treasury Check method will be made by the Financial Management Division, Accounting Branch, Code BFH, NASA Headquarters, Washington D.C. 20546, telephone (202) 358-1050. RITA shall submit Federal Cash Transaction Reports (SF 272) to the above address within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the three months following the quarter being reported. RITA shall not make advanced payments to any of its members except those that are non-profit organizations or educational institutions.

### **8.2 Obligation**

NASA's obligation to make payments to RITA is limited to only those funds obligated under this Agreement. NASA may obligate funds under this Agreement incrementally.

## **9. Term**

### **9.1 Term of this Agreement**

9.1.1 This Agreement commences upon the date of the last signature hereon and continues for five (5) years. If all funds are expended prior to the five (5) year duration, the Parties have no obligation to continue performance and may elect to cease development at that point.

9.1.2 This Agreement is contingent on the availability of appropriated funds.

### **9.2 Termination Provisions**

9.2.1 This Cooperative Agreement may be suspended or revoked in whole or in part by RITA or by NASA after consultation with, and the expiration of thirty days notice to, the other party.

9.2.2 Upon thirty (30) days notice to RITA, NASA may temporarily suspend the cooperative agreement, withhold further payments on work not performed prior to this suspension, and prohibit RITA from incurring additional costs, pending corrective action or a decision by NASA to revoke the funded cooperative agreement. NASA will allow all necessary and proper costs which could not reasonably be avoided during the period of suspension.

9.2.3 In the event of revocation, RITA shall not be entitled to additional funds or payments except as may be required by RITA to meet commitments which became firm prior to the effective date of revocation and are otherwise appropriate.

## **10. Management of the Project**

### **10.1 Management and Project Structure**

RITA shall be responsible for the overall and technical management of the Projects. The NRTC Director may provide recommendations to RITA regarding Project development and technical collaboration between the Government and RITA. The NRTC Director shall be responsible for the review and approval of the Project Milestones. Government personnel will participate as advisors in the Technical Advisory Committee meetings conducted under this Agreement.

### **10.2 Project Management Planning Process**

Project planning will be subject to quarterly and annual review, which will consist of an Annual Program Plan (as required in subparagraph 2.2.1 above) with inputs and review from RITA and Government representatives, in cooperation with and to be approved by the NRTC Director, containing the detailed schedule of research activities, project milestones, deliverables and periodic reviews of progress on Project Milestones (as provided in subparagraph 2.2.3 above).

### **10.3 Annual Program Plan Review**

RITA, with NRTC Director review, will prepare an overall Annual Program Plan, as provided in subparagraph 2.2.1 above, by December 1 of each Agreement year. (for this purpose, each consecutive twelve (12) month period from, and including, the month of execution of this Agreement during which this Agreement shall remain in effect shall be considered an "Agreement Year"). The Annual Program Plan will be presented to and reviewed by RITA Management and the NRTC Director.

## **11. Agreement Administration**

11.1 During performance of this Agreement, RITA officials shall maintain close liaison with the NRTC Director for the technical and scientific monitoring of this Agreement.

11.2 Administrative matters under this Agreement shall be referred to the following representatives of the Parties:

11.2.1 NASA: Agreement Administrator

11.2.2 RITA: Executive Director of RITA

11.3 Technical matters under this Agreement shall be referred to the following representatives:

11.3.1 NASA: Director of NRTC

11.3.2 RITA: Technical Advisory Committee Chairperson

11.4 The Parties may change the representatives named in the Article by written notice.

11.5 The following Defense Corporate Executives are designated subagreement administrators for all efforts under this agreement pertaining to the corporations under their cognizance:

- 11.5.1 Steve Trautwein  
Defense Corporate Executive  
The Boeing Company  
Mail Stop 13-05  
P.O. Box 3707  
Seattle, WA 98124-2207
- 11.5.2 Don D. Pixley, Jr.  
Defense Corporate Executive  
McDonnell Douglas Corporation  
Mail Code 1002341  
P.O. Box 516  
St. Louis, MO 63166-0516
- 11.5.3 Richard Conroy  
Defense Corporate Executive  
Textron Incorporated  
40 Westminster Street  
Providence, RI 02903-2525
- 11.5.4 Alan Tinti  
Defense Corporate Executive  
United Technologies Corporation  
1 Financial Plaza  
Mail Stop 593-00  
Hartford, CT 06101-2603

**12. Publications and Reports** (Jun. 1993) (14 C.F.R. § 1260.402 amended)

12.1 All information disseminated as a result of this Agreement, shall contain a statement which acknowledges NASA's support and identifies this Agreement by number.

12.2 Prior approval by the NRTC Director is required only where RITA requests that the results of the Projects be published outside the NRTC and RITA in a scientific or technical publication and where such publication identifies the NRTC. Two copies of each draft publication shall accompany the approval request.

12.3 Reports shall be informal in nature and contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed.

**12.4 Publications**

12.4.1 Understanding that it is the intent of the NRTC program to have minimal publications of the technologies developed, RITA/NRTC shall generate minimal public domain publications. However, results that are not considered proprietary to RITA may be published in technical forums, publications, etc. Approval process for such documents will be:

12.4.1.1 Reviewed and approved by the Technical Advisory Committee, and

12.4.1.2 approved by the NRTC Director

12.4.2 This procedure applies to all work being performed under this Agreement.

## 12.5 Performance reports

12.5.1 Reports required by this Agreement are indicated below:

12.5.1.1 An Annual Status Report and/or Project Final Report, summarizing the technical achievements resulting from the project and schedule for commercialization if applicable - Due 45 days after the performance period

12.5.1.2 Quarterly reports on the status of Project Milestones - Due the last day of the month following the end of the calendar quarter

12.5.1.3 Financial reports - As required by the provision entitled "Financial Management" (paragraph 15)

12.5.1.4 Annual Program Plan - As required by the provision entitled "Management of the Project" (paragraph 110.3)

12.5.1.5 The NRTC Director may request one additional written status report each year.

12.5.1.6 Status and final technical reports shall not exceed five pages per Project.

12.5.2 Performance reports and summaries of Projects shall display the following on the first page:

12.5.2.1 Title of this Agreement

12.5.2.2 Type of report

12.5.2.3 Name of the principal investigator

12.5.2.4 Period covered by the report

12.5.2.5 Name and address of RITA

12.5.2.6 Cooperative Agreement number

12.5.3 Five copies of all preprints, reprints, manuscripts, status and final reports shall be distributed as follows:

12.5.3.1 Original - Agreement Administrator

12.5.3.2 Three copies - NRTC Director identified in this Agreement

12.5.3.2 Micro-reproducible copy - NASA Center for Aerospace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090-2934.

**13. Extensions** (14 C.F.R. § 1260.403 amended)

13.1 RITA may extend the expiration date of this Agreement or a supplement thereto if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. For this purpose, RITA may make a single no-cost extension not exceeding 12 months. RITA must make the extension in writing to the Agreement Administrator 10 days prior to the expiration date. Requests for all other extensions (in excess of 30 days) must be submitted, in writing, to the Agreement Administrator for prior approval.

**14. Allowable Costs** (14 C.F.R. § 1260.406 amended)

14.1 OMB Circular No. A-21, "Cost Principles for Educational Institutions," OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations," and Section 27 of OMB Circular No. A-110, "Grants and Agreement with Institutions of Higher Education, Hospital and other Nonprofit Organizations," as applicable, govern the allowability of costs chargeable to NASA under this Agreement. Cost-related and administrative "prior approvals" required by A-21, A-122 and A-110 are waived unless specifically required elsewhere in the provisions or special conditions.

14.2 Payments to individuals for consultant services under this Agreement shall not exceed the daily equivalent of the maximum rate paid to a GS-18 Federal employee. The limit applies to personal compensation exclusive of expenses and indirect cost.

14.3 In addition, Comptroller General decisions govern allowability of costs for international air transportation (see §1260.420(b))

**15. Financial Management** (Jun. 1992) (14 C.F.R. § 1260.407 amended)

15.1 Management and audit. The financial management system of RITA members shall meet the standards set forth in 14 C.F.R. § 1260.509. The provisions of OMB Circular No. A-133, "Audit of Institutions of Higher Education and Other Nonprofit Organizations," or OMB Circular No. A-128, "Audits of State and Local Governments," as applicable, apply to this award only with respect to the audit of the allowability of costs. NASA Federal domestic assistance numbers do not apply to NASA cooperative agreements.

15.2 Records. Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this Agreement shall be retained for a period of 3 years, except that (1) if any litigation, claim, or audit findings involving records shall be retained until all litigation, claims, or audit findings involving the records have been resolved, and (2) records for non expendable property acquired with Agreement funds shall be retained for 3 years after its final disposition. The retention period starts from the date of the submission of the final Federal Cash Transactions Report (SF272). The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of RITA and of subcontractors to make audits, examinations, excerpts, and transcripts of documents supporting costs charged to the government under this Agreement. All provisions of this subparagraph shall apply to any subcontractor performing substantive work under this Cooperative Agreement.

15.3 Unexpended balances. Any unexpended balance of funds which remains at the end of any funding period, except the final funding period of this Agreement, shall be carried over to the next funding period, and may be used to defray costs of any funding period of this Agreement.

15.4 Reports. Monthly financial execution reports will be provided to the NRTC Government Office.

## **16. Patent Rights**

### **16.1 Definitions**

16.1.1 "Contract" means any actual or proposed contract, cooperative agreement, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

16.1.2 "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

16.1.3 "Made" when used in relation to any invention means the conception or first actual reduction to practice such invention.

16.1.4 "Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

16.1.5 "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

16.1.6 "Recipient" means; RITA, where RITA has been formed into a separate legal entity by the non-U.S. Government parties to this cooperative agreement for carrying out their responsibilities under this cooperative agreement; and/or RITA Member, and/or other entities having a contractual relationship with RITA or RITA members that are assigned or contracted to perform specified participant activities under this cooperative agreement. Recipient shall mean "contractor" for purposes of the PATENT RIGHTS - RETENTION BY CONTRACTOR clauses (Attachments I - IV). \*\*\*\*

16.1.7 "Small Business Firm" means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used.)

16.1.8 "Subject Invention" means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Cooperative agreement.

16.1.9 "Government Contractors" means contractors other than Recipient as defined in 16.1.6.

## 16.2 Allocation of Principal Rights

### 16.2.1 Recipient Inventions

For other than Small Business Firms or Nonprofit organization Recipients, The "PATENT RIGHTS - RETENTION BY RECIPIENT (LARGE BUSINESS)" clause applies (Attachment I). For Small Business Firms and Nonprofit organization Recipients, the "PATENT RIGHTS - RETENTION BY RECIPIENT (SMALL BUSINESS)" clause applies (Attachment II).

### 16.2.2 Government Inventions

NASA will use reasonable efforts to report inventions made solely by Federal Government employees as a consequence of, or which bear a direct relation to, the performance of specified Federal Government activities under this cooperative agreement and, upon timely request, will grant RITA or its designated member, the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph 16.2.5.1, below. At a minimum, Recipient is hereby granted a revocable, non-exclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Recipient's license extends to its subsidiaries and affiliates, if any, within the corporate structure of which Recipient is a party and includes the right to grant sub licenses of the same scope to the extent Recipient was legally obligated to do so at the time the cooperative agreement was awarded. Recipient's license also includes the right to grant sub licenses to all present and future members of RITA in accordance with the RITA Intellectual Property Rights document. Recipient's license is revocable only to the extent provided by 35 U.S.C. 209.

### 16.2.3 Government Contractor Inventions

In the event Government Contractors are tasked to perform work in support of specified Government activities under this cooperative agreement and inventions are made solely by contractor employees, and the Government has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, will grant RITA or its designated member, the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph 16.2.5.2, below. At a minimum, Recipient is hereby granted a revocable, non-exclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Recipient's license extends to its subsidiaries and affiliates, if any, within the corporate structure of which Recipient is a party and includes the right to grant sub licenses of the same scope to the extent Recipient was legally obligated to do so at the time the cooperative agreement was awarded.

Recipient's license also includes the right to grant sub licenses to all present and future members of RITA in accordance with the RITA Intellectual Property Rights document. Recipient's license is revocable only to the extent provided by 35 U.S.C. 209.

#### 16.2.4 Joint Government and Recipient Inventions

NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between Government employees (or employees of Government Contractors) and employees of Recipient. Joint Recipient inventions with NASA will be handled as provided in 16.2.4.1 and 16.2.4.2 below. Joint Recipient inventions with other Federal Agencies will result in Recipient having the option to elect to retain title to its undivided interest to the inventions and the Government retaining its undivided interest. Recipient shall be granted an option for an exclusive license to the Government's interest.

16.2.4.1 For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that the Administrator determines that such efforts are not undertaken, the Administrator may void NASA's agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph 16.2.5 below.

16.2.4.2 For small business firms and nonprofit organizations, NASA shall assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e). These inventions will be subject to the applicable license or licenses reserved in paragraph 16.2.5 below.

#### 16.2.5 Minimum rights reserved by the Government

Any license or assignment granted Recipient pursuant to paragraphs 16.2.2, 16.2.3, or 16.2.4 above will be subject to the reservation of the following licenses:

16.2.5.1 As to inventions made solely or jointly by government employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States for Government purposes; and

16.2.5.2 As to inventions made solely by, or jointly with, employees of Government Contractors, the rights in the Government of the United States as set forth in 16.2.5.1 above, as well as the revocable, non-exclusive, royalty-free license the Government Contractor retains as set forth in 14 CFR 1245.108.

16.2.6 Preference for United States Industry.

For the non-exclusive licenses granted under paragraphs 16.2.2 and 16.2.3 the Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions will be manufactured substantially in the United States.

16.3 Work performed by RITA and its members under this cooperative agreement with the Government is considered undertaken to carry out a public purpose of support and/or stimulation of the nation's global competitive edge in rotorcraft technology rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by RITA and its members is not considered "by or for the United States" and the Government assumes no liability for infringement by RITA or its members under 28 U.S.C. 1498.

**17. Rights in Data**

17.1 Definitions

17.1.1 "Data" means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

17.1.2 "Government Purpose License Rights" means the right to use, duplicate or disclose Data in whole or in part and in any manner for government purposes only and to have or permit others to do so for government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use Data for commercial purposes.

17.2 Data Categories

17.2.1 General: Data exchanged between the Government and Recipient under this cooperative agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided below in this provision.

17.2.2 Background Data: In the event it is necessary for Recipient to furnish the Government with Data which existed prior to, or produced outside of, this cooperative agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and its contractors (under suitable protective conditions) only for the purpose of carrying out the Government's responsibilities under this cooperative agreement. Upon completion of activities under this cooperative agreement, such Data will be disposed of as requested by Recipient.

17.2.3 Data first produced by Recipient: All Data first produced by Recipient within the scope of RITA's responsibilities as outlined in section 2.2 of this Cooperative Agreement, shall be considered to have been developed by the recipient with mixed Government and industry funds. All rights and title to data developed under this Cooperative Agreement shall be owned by RITA.

Recognizing that this Program is conducted with an approximately equal contribution of Government direct funding provided under this Agreement and funds of RITA and/or RITA's members, the Government shall have immediate access for the Government's own internal use, to all data initially developed under NRTC projects supported by Government resources (funding, personnel, equipment or facilities). However, the data shall be protected and maintained in confidence and disclosed and used by the Government and such contract employees that the Government may hire on a temporary or periodic basis to perform services for the purposes of conducting only internal government research and development. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors.

If the Government desires to make available the above data owned by RITA to potential bidders in connection with a procurement, the Government may make potential bidders aware of its availability through RITA. Such bidders not already in possession of the data may acquire a license for use of the data directly from RITA for a reasonable fee and/or royalty payments determined by the RITA Licensing Committee as further discussed in the Intellectual Property Rights Provisions and/or Operating Procedures of RITA. Any such fee and/or royalty payments will be determined based on the cost incurred by RITA members in generating the data and related RITA administrative costs, and taking into consideration such private sector pricing factors as breadth of the license, income-producing capability of the technology, and adjustments to value based on price of comparable technology or obsolescence. The amount of the fee and/or royalty determined under this provision will be approved by the RITA Board of Directors. Licensing fees collected under this provision during the term of the Agreement will be reinvested by RITA to perform NRTC R&D above and beyond the 50% matching funds requirement established by this Agreement, or for protection of research results, e.g., patent applications.

17.2.4 Data first produced by the Government: As to Data first produced by the Government in carrying out the Government's responsibilities under the cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if obtained from the Recipient, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence for a period of five (5) years after the development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

17.2.5 Copyright. In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work, the following paid-up licenses shall apply:

17.2.5.1 If it is indicated on the Data that the Data existed prior to, or was produced outside of, this Agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this cooperative agreement; and

17.2.5.2 If the furnished Data does not contain the indication of 17.2.5.1 above, it will be assumed that the Data was first produced under this Agreement, and the receiving party and others acting on its behalf, shall be granted a license of the type provided in OMB Circular A-110, Subpart C, Intangible Property, paragraph .36(a).

17.2.6 Oral and visual information. If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to the Government, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to the Government within 10 days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

17.2.7 Disclaimer of Liability. Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:

17.2.7.1 Data not identified with a suitable notice or legend as set in paragraph 17.2.2 above; nor

17.2.7.2 Information contained in any Data for which disclosure and use is restricted under paragraphs 17.2.2 and 17.2.3 above, if such information is or becomes generally known without breach of the above, is known to or is generated by the Government independently of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which Recipient has, or is required to furnish to the Government without restriction on disclosure and use.

### 17.3 Marking of Data

17.3.1 Any Data delivered under this cooperative agreement, by the Government or the Recipient, shall be marked with a suitable notice or legend.

### 17.4 Lower Tier Agreements

17.4.1 The Recipient shall include this clause, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

**18. Security** (14 C.F.R. § 1260.411 amended)

18.1 Normally, NASA cooperative agreements do not involve classified defense information. However, if information is sought or developed by RITA that should be classified in the interests of national security, the Agreement Administrator shall be notified immediately.

**19. Civil Rights** (Jun. 1993) (14 C.F.R. § 1260.412 amended)

19.1 Work on NASA cooperative agreements is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. 2000d-1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 et seq.), Section 504 of the Rehabilitation Act of 1983, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the NASA implementing regulations (14 CFR parts 1250, 1251, and 1252).

**20. Clean Air-Water Pollution Control Acts** (Mar. 1992) (14 C.F.R. § 1260.414 amended)

20.1 If this Agreement or supplement thereto is in excess of \$100,000, RITA agrees to notify the Agreement Administrator promptly of the receipt, whether prior or subsequent to RITA's acceptance of this Agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this Agreement or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of funding under this Agreement in excess of \$100,000, the Recipient (a) stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance; (b) agrees to comply with all requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 et seq. as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq. as amended by Public Law 92-500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned Sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the agreement; and (c) agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of \$100,000, and to take such action as the Agreement Administrator may direct to enforce such criteria and requirements.

**21. Debarment and Suspension and Drug-Free Workplace** (Feb. 1992) (14 C.F.R. § 1260.417 amended)

21.1 NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Government wide Debarment and Suspension (Non procurement) and Government-wide requirements for Drug-Free Workplace (Grants), unless excepted by §§ 1265.110 or 1265.610. The certifications required by that regulation must accompany extension proposals.

**22. Foreign National Employee Investigative Requirements** (May 1992) (14 C.F.R. § 1260.418 amended)

22.1 RITA shall submit a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (Federal Bureau of Investigation Card FD-258) for each foreign national employee requiring access to a NASA Installation. These documents shall be submitted to the Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

22.2 The Installation Security Office will request from NASA Headquarters, International Relations Division (Code IR), approval for each foreign national's access to the Installation prior to providing access to the installation. If the access approval is obtained from NASA Headquarters prior to completion of the NAC and performance of the agreement requires a foreign national to be given access immediately, the NRTC Director may submit an escort request to the Installation's Chief of Security.

**23. Restrictions on Lobbying** (Apr. 1990) (14 C.F.R. § 1260.419)

23.1 This award is subject to the provisions of 14 CFR part 1271 "New Restrictions on Lobbying."

**24. Travel and Transportation** (Jun. 1993) (14 C.F.R. § 1260.420 amended)

24.1 Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 App. U.S.C. 1517) (Fly America Act) requires RITA to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

24.2 Department of Transportation regulations, 49 CFR part 173, govern RITA shipment of hazardous materials and other items.

**25. Program Income** (Jun. 1992) (14 C.F.R. § 1260.421 amended)

25.1 Program income shall be retained by RITA and shall be added to funds already committed to the project and used to further project objectives.

**26. Equipment and Other Property** (June 1993 14 C.F.R. § 1260.408 amended)

26.1 NASA cooperative agreements permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of \$5,000 and not included in the approved proposal budget requires the prior approval of the Agreement Administrator unless the item is merely a different model of an item shown in the approved proposal budget. Requests for prior approval of technical property may be made telephonically to the Agreement Administrator.

26.2 RITA may not purchase, as a direct cost to this Agreement, items of non-technical property, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicle, and automatic data processing equipment. If RITA requests an exception, RITA shall submit a written request for Agreement Administrator approval, prior to purchase by RITA, stating why RITA cannot charge the property to indirect costs. In the event

the charging of the costs are not approved by the Agreement Administrator the cost of such purchase shall not be chargeable to this agreement.

26.3 Under no circumstances shall Agreement funds be used to acquire land or any interest therein, to acquire or construct facilities, or to procure passenger carrying vehicles.

26.4 Title to equipment purchased with Agreement funds shall vest in RITA unless otherwise provided. The Government reserves the right to require transfer to itself of title to items costing more than \$1,000 each or, when fabricated into a single coherent system, in aggregate costs. Such reservation is subject to §1260.506.

26.5 Title to Government furnished equipment (including equipment, title to which has been transferred to the Government pursuant to 14 C.F.R. § 1260.408(d) prior to completion of the work) will remain with the Government.

26.6 Title to expendable personal property shall vest in the Recipient upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or expiration of this Agreement, and the property is not needed for any other Federally sponsored project or program, RITA shall retain the property for use on non-Federally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in accordance with Section 34 of OMB Circular No. A-110.

26.7 RITA shall establish and maintain property management standards for non expendable personal property and otherwise manage such property as set forth in 14 C.F.R. § 1260.507.

26.8 Annually by October 31, RITA shall submit 2 copies of an inventory report which lists all Government furnished equipment in their custody as of June 30. RITA shall submit 2 copies of a final inventory report by 60 days after the expiration date of this Agreement. The final inventory report shall contain a list of all RITA acquired equipment and a list of Government furnished equipment. Annual and final inventory reports shall reflect the elements required in 14 C.F.R. § 1260.507(a)(1) and be submitted to the Agreement Administrator. When Government furnished equipment is no longer needed, RITA shall notify the Agreement Administrator, who will provide disposition instructions.

**27. Interest Bearing Accounts (Jan. 1992 amended)**

27.1 Advances of federal funds shall be maintained in interest bearing accounts. Interest earned on federal advances deposited in such accounts shall be remitted to NASA at least quarterly, as instructed by the Financial Management Office of the NASA installation which issued this Agreement. Interest amounts up to \$250 per year may be retained by RITA.

## **28. Subcontracts (Jun. 1992)**

28.1 NASA Agreement Officer consent is required for subcontracts over \$25,000, if not accepted by NASA in the original proposal, and may be requested through the Agreement Administrator by providing the name of the subcontractor and the purpose and dollar amount of the subcontractor. For subcontracts over \$100,000, the Recipient shall provide the following additional information, as a minimum, to the Agreement Administrator for forwarding to the Agreement Officer:

28.1.1 Basis for subcontractor selection.

28.1.2 Justification for lack of competition when competitive bids or offers are not obtained.

28.1.3 Basis for award cost or award price.

28.2 The Recipient shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

## **29. Procurement Standards (Feb. 1992)**

29.1 As prescribed by Sections 40 through 48 of OMB Circular No. A-110, the Recipient shall be subject to the following procurement standards:

29.1.1 The Recipient shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of a subcontract using Government funds. No employee, officer, or agent shall participate in the selection, award, or administration of subcontracts under agreements using Government funds, where, to his or her knowledge, there exists a financial interest on the part of that person, that person's immediate family or partners, or any organization in which that person or an immediate family member or partner has a financial interest or with whom he or she is negotiating or has any arrangement concerning prospective employment. The Recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors or potential subcontractors. Such standards shall provide for disciplinary actions to be applied for violation of such standards by the Recipient's officers, employees, or agents.

29.1.2 All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Recipient should be alert to organizational conflicts of interest or noncompetitive practices among its subcontractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective subcontractor performance and eliminate unfair competitive advantage, subcontractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals should be excluded from competing for such procurements, except when NASA gives approval to a Recipient's request to waive this requirement for a particular procurement. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the Recipient--price and other factors considered. Solicitations shall

clearly set forth all requirements that the bidder/offeror must fulfill in order for the bid/offer to be evaluated by the Recipient. Any and all bids/offers may be rejected when it is in the Recipient's interest to do so.

29.1.3 The Recipient shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:

29.1.3.1 Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

29.1.3.2 Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

29.1.3.3 Positive efforts shall be made by the grantee to utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as sources of supplies and services. Such efforts should allow these sources the maximum practicable opportunity to compete for subcontracts utilizing Government funds.

29.1.3.4 The types of procuring instruments used, e.g. fixed-price subcontracts, cost reimbursable subcontracts, purchase orders, and incentive subcontracts, shall be determined by the Recipient but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "Cost-plus-a-percentage-of-cost" method of contracting shall not be used.

29.1.3.5 Subcontracts shall be made only with responsible subcontractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as subcontractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

29.1.3.6 Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicators, together with discounts. Costs analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

29.1.3.7 Procurement records and files for purchases in excess of \$10,000 shall include the following:

29.1.3.7.1 Basis for subcontractor selection.

29.1.3.7.2 Justification for lack of competition when competitive bids or offers are not obtained.

29.1.3.7.3 Basis for award cost or price.

29.1.3.8 A system for subcontract administration shall be maintained to ensure subcontractor conformance with terms, conditions, and specifications of the subcontract, and to ensure adequate and timely follow up of all purchases.

29.1.3.9 The following provisions are required in subcontracts in excess of \$10,000 awarded by the Recipient or a subcontractor, regardless of tier.

29.1.3.9.1 Provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which subcontractors violate or breach subcontract terms and provide for such remedial actions as may be appropriate.

29.1.3.9.2 Provisions for termination by the Recipient, including the manner by which termination will be effected, and the basis for settlement. In addition, such subcontracts shall describe conditions under which the subcontract may be terminated for default, as well as conditions where the subcontract may be terminated because of circumstances beyond the control of the subcontractor.

29.1.3.9.3 A provision requiring compliance with Executive Order 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60).

29.1.3.9.4 For negotiated subcontracts, a provision to effect that the Recipient, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the subcontractor which are directly pertinent to the specific project for the purpose of making audits, examinations, excerpts, and transcriptions.

29.1.3.10 All subcontracts, regardless of tier, which may involve international air transportation shall require subcontractor compliance with the statute cited in paragraph 24.1.

29.1.3.11 All subcontracts, regardless of tier, which may involve shipment of hazardous materials or other regulated items shall require subcontractor compliance with the regulation cited in Paragraph 24.2.

### **30. Military Recruiting on Campus**

As a condition for receipt of funds available to the Government under this agreement, RITA shall obtain from institutes of higher education an agreement that they are not an institution that has a policy of denying, and that they are not an institution that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: (A) entry to campuses or access to students on campus or (B) access to directory information pertaining to students. If the institution is determined, using procedures established by the Secretary of Defense to implement Section 558 of Public Law 103-337 (1994), to be such an institution during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments to that institute of DoD funds under this agreement and all other DoD grants and cooperative agreements, and it may suspend or terminate such grants and agreements with that institute unilaterally for material failure to comply with the terms and conditions of this agreement.

### **31. Entire Agreement**

31.1 This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. No OMB provision or any parts thereof, other than those expressly cited herein apply to this Agreement. this Agreement may be revised only by written consent of RITA and the Agreement Administrator. this Agreement, or modifications thereto, may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.

**ATTACHMENT I**  
**PATENT RIGHTS - RETENTION BY THE CONTRACTOR (LARGE BUSINESS)**

**(a) Definitions.**

(1) "Administrator," as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) "Contract," as used in this clause, means any actual or proposed contract, cooperative agreement, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

(3) "Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(4) "Made," as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(5) "Nonprofit organization," as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(6) "Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each, case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(7) "Small business firm," as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration.

(8) "Subject invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, and is conceived or first actually reduced to practice in the performance of work under this contract.

**(b) Allocation of principal rights.**

(1) Presumption of title. This contract anticipates the granting of an advance waiver of invention rights satisfactory to the parties.

(i) Any invention that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of Section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the invention the Recipient submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the invention was not made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in subdivision (i) above. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(2) Property rights in subject inventions.

Each subject invention for which the presumption of subdivision (1)(i) above is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in subparagraph (3) below.

(3) Waiver of rights.

(i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of Section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, have adopted the Presidential memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR 1245, Subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with subparagraph (e)(2) below, or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in the REQUESTS FOR WAIVER OF RIGHTS - LARGE BUSINESS clause (ATTACHMENT III).

(c) Minimum rights reserved by the Government.

(1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR Section 1245, Subpart 1, the Government reserves --

(i) An irrevocable, non-exclusive, nontransferable, royalty-free license for the practice of such invention for government purposes throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

**(d) Minimum rights to the Contractor.**

(1) The Contractor is hereby granted a revocable, non-exclusive, royalty-free worldwide license in each patent application filed in any country on a contractor subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention (within the times specified) in accordance with subparagraph (e)(2) below. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sub licenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. Contractor's license also includes the right to grant sub licenses to all present and future members of RITA as long as Contractor is and remains a member of RITA pursuant to RITA Intellectual Property Rights document.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR 1245, Subpart 2, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with 14 CFR 1245.211, any decision concerning the revocation or modification of its license.

**(e) Invention identification, disclosures, and reports.**

(1) The Contractor shall establish and maintain active and effective procedures to assure that its subject inventions are promptly identified and disclosed to Contractor personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within four months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this clause or, if earlier, within six months after Recipient becomes aware that a reportable item has been made, but in any event before any on sale, public use, or publication of such invention known to the Recipient. The Contractor shall be given an opportunity to disclose reportable items after the aforementioned times upon a showing of good cause. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the subject invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the subject invention. The disclosure shall also identify any publication, on sale, or public use of any subject invention.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are no such inventions) and that the procedures required by subparagraph (e) (1) above have been followed.

(ii) A final report, within three months after completion of the contracted work, listing all subject inventions or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Contractor agrees, subject to paragraph 27.302(j), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

**(f) Examination of records relating to inventions.**

(1) The Contracting Officer or any authorized representative shall, until 3 years after termination or completion of this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether --

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by subparagraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject inventions, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

**(g) Subcontracts.**

(1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall --

(i) Include this Attachment PATENT RIGHTS - RETENTION BY THE CONTRACTOR - (LARGE BUSINESS) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the Attachment PATENT RIGHTS - RETENTION BY THE CONTRACTOR - (SMALL BUSINESS) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor --

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Contractor in the clause of subdivision (1) (i) or (1) (ii) above, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding subparagraph (4) above, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the contractor is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(a) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the contractor may deem necessary to obtaining and maintaining of such private support; and

(b) Request, in the event of inability to reach agreement pursuant to (a), above, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the contractor be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(i) Exceptional circumstances: A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the contractor pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(ii) Waiver petition: The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR 1245.1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, Sec. 305). If a waiver is not requested or granted, the contractor may request a license from NASA (see licensing of NASA inventions, 14 CFR 1245.2). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS - LARGE BUSINESS.

(h) **Preference for United States industry.** Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(end of clause)

**ATTACHMENT II**  
**PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SMALL BUSINESS)**

**[\*\*The disposition of rights in inventions made by small business firms and educational and other nonprofit organizations for the performance of experimental, developmental, or research work is governed by Chapter 18 of Title 35, United States Code. Implementing regulations are found in 37 CFR 401 et seq.\*\*]**

**(a) Definitions.**

(1) "Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(2) "Made," as used in this clause, when used in relation to any invention means the conception or first actual reduction to practice such invention.

(3) "Nonprofit organization," as used in this clause, means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application," as used in this clause, means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm," as used in this clause, means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

**(b) Allocation of principal rights.**

(1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States for government purposes the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor.

(1) The Contractor will disclose each subject invention to NASA within four months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The Contractor shall be given an opportunity to disclose subject inventions after the aforementioned times upon a showing of good cause. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application of six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

**(d) Conditions when the Government may obtain title.**

The Contractor will convey to NASA, upon written request, title to any subject invention -

(1) If the Contractor fails to disclose or elect title to the subject invention in accordance with paragraph (c) of this clause, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

**(e) Minimum rights to Contractor and protection of the Contractor right to file.**

(1) The Contractor will retain a revocable, non-exclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention in accordance with paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure to which the Contractor is a party and includes the right to grant sub licenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. Contractor's license also includes the right to grant sub licenses to all present and future members of RITA as long as Contractor is and remains a member of RITA in accordance with RITA Intellectual Property Rights document. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonable accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

**(f) Contractor action to protect the Government's interest.**

(1) The Contractor agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and, (ii) convey title to the Federal agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and non technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify NASA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention the following statement, "This invention was made with Government support under (identify the agreement) awarded by NASA. The Government has certain rights in the invention."

(5) The Contractor shall provide the Contracting Officer the following:

(i) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(ii) Upon request, the filing date, serial number, and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iii) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

**(g) Subcontracts.**

(1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall --

(i) Include this clause (PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SMALL BUSINESS)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization.

(ii) Include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause (PATENT RIGHTS - RETENTION BY THE CONTRACTOR (LARGE BUSINESS)).

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor --

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Contractor in the clause of subdivision (1) (i) or (1) (ii) above, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding subparagraph (4) above, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the contractor is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(a) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the contractor may deem necessary to obtaining and maintaining of such private support; and

(b) Request, in the event of inability to reach agreement pursuant to (a), above, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the contractor be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(i) Exceptional circumstances: A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the contractor pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(ii) Waiver petition: The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR 1245.1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, Sec. 305). If a waiver is not requested or granted, the contractor may request a license from NASA (see licensing of NASA inventions, 14 CFR 1245.2). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS - LARGE BUSINESS.

**(h) Reporting on utilization of subject inventions.**

The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding under-taken by the agency in accordance with paragraph (i) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

**(i) Preference for United States industry.**

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive rights to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NASA upon a showing by the Contractor or its assignee that reasonable, but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**(j) March-in rights.**

The Contractor agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that-

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

**(k) Special provisions for contracts with nonprofit organizations.**

If the Contractor is a nonprofit organization, it agrees that -

(1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this paragraph (k)(4).

(end of clause)

ATTACHMENT III  
REQUESTS FOR WAIVER OF RIGHTS - LARGE BUSINESS

[\*\*NASA routinely and expeditiously grants waiver of title pursuant to the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies Dated February 18, 1983, and Section 1(b)(4) of Executive Order 12591, dated April 10, 1987.\*\*]

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR Section 1245; Subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected contractor. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address, and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific section or sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Contracting Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Contracting Officer of the Administrator's determination. The Contracting Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Contracting Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

(end of clause)

ATTACHMENT IV  
DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE  
AND PATENT REPRESENTATIVE  
[\*\*37 CFR 401.5(b), 37 CFR 401.14(1)\*\*]

(a) For purposes of administration of the clause of this contract entitled "PATENT RIGHTS - RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" or "PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" the following named representatives are hereby designated by the Contracting Officer to administer such clause:

Title	Office Code	Address (including zip code)
New Technology Representative	Code XC	NASA Headquarters Attn: Mr. Ray Gilbert Code XC Washington, DC 20546
Patent Representative	Code GP	NASA Headquarters Patent Counsel Code GP Washington, DC 20546

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring "PATENT RIGHTS - RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" clause or "PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 18-27.375-3 of the NASA FAR Supplement.

(end of clause)